

BQC-93-002

Date: November 9, 1993 BQC-93-002
Replaces 91-049

To: Nursing Homes NH 2
Facilities for the Developmentally Disabled FDD 2

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: The Scope and Practice of Physician Extenders (Nurse Practitioner, Physician Assistants) in Wisconsin Nursing Homes and Facilities for the Developmentally Disabled.

The purpose of this memo is to keep you informed of the changes that have occurred as a result of the current (April 1992) Code of Federal Regulations relating to the scope and practice of physician extenders. It obsoletes an earlier BQC memo (91-049) that referenced the October, 1990 version of the Long Term Care regulations. The Bureau has received numerous inquiries about the allowable role of nurse practitioners and physician assistants in nursing homes and facilities for the developmentally disabled.

Certified Nursing Homes

Federal regulations found at 483.40(e)(1), (2) and 483.40(f) allow a physician to delegate tasks to a nurse practitioner or physician assistant under certain situations. These regulations make some distinctions between Medicare certified skilled nursing facilities (SNFs) and Medicaid certified nursing facilities (NFs).

- (e) Physician delegation of tasks in SNF. (1) Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who:
- (i) meets the applicable definition in section 491.2 of this chapter or in the case of a clinical nurse specialist, is licensed as such by the state;
 - (ii) is acting within the scope of practice as defined by state law; (emphasis added) and
 - (iii) is under the supervision of the physician.

"(2) A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under state law or by the facility's own policies."

As indicated in sub (ii) above, federal regulations require physician extenders to act within the scope of practice as defined by state law. Under state law, the practice of physician assistants is governed by Chapter Med 8 and the practice of nurse practitioners is regulated by Chapter 441, WI Stats., and section N 6.03(2), Wisconsin Administrative Code. A summary of the requirements of these regulations is found below, in the section entitled Scope of practice as defined by state law.

There are sections of Wisconsin Administrative Code HSS 132.52(a)(b), and (c) which require a physician to specifically order a person's admission to a nursing home; specifically provide receipt of information about the person's current medical condition and diagnosis, receipt of physician initial plan of care, orders for immediate care; and receipt of certification that the person is free of communicable tuberculosis and clinically apparent communicable disease or any disease the person may be found to have. (Please note that to assure compliance with the Americans with Disabilities Act as well as the Rehabilitation Act of 1973, we have issued a waiver via BQC memo 93-010 dated February 10, 1993 for nursing homes and facilities for developmentally disabled of specific sections of the rules that relate to physician certification that the person is free of tuberculosis and communicable disease.)

42 CFR 483.40(f) relates to performance of physician tasks in NFs. The regulation reads as follows:

"(f) At the option of the state, any required physician tasks in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist or physician assistant who is not an employee of the facility but who is working in collaboration with a physician."

One frequently asked question is whether a physician countersignature is required for a nurse practitioner's verbal orders or for a physician assistant's verbal orders. Nurse practitioner code language is silent and does not require countersignature unless facility policy requires it. For the physician assistant (PA), physician countersignature is required by Med 8.08(r)1 and 2.

It should also be noted that controlled substances are not allowed to be prescribed by either the NP or PA per 161.01(4), Wis. Stats, and Med 8.08(3).

Licensed-only nursing homes

Outside of the restriction found in HSS 132.66(1)(d) and HSS 132.52(2), which have not been waived for licensed only nursing homes, physician assistants and nurse practitioners are limited in the tasks they perform only by their scope of practice as defined in Chapter Med 8 (physician assistants) and in Chapter 441, Stats., and section N 6.03(2), Wisconsin Administrative Code (nurse practitioners). A summary of the requirements of these regulations is found below, in the section entitled Scope of practice as defined by state law.

HSS 132.66(1)(d) prohibits physician extenders from ordering blood, lab, or radiology exams for skilled care residents. As indicated above, this restriction was waived for all nursing homes via BQC memo 91-050, dated September 4, 1991. HSS 132.52(a) and (b) prohibit residents from being admitted to a nursing home without an order from a physician and without receipt of information from the physician about the resident (including orders and the physician's plan of care).

Facilities for the developmentally disabled

In regard to physician assistants and nurse practitioners, 42 CFR 483.460(a)(4) notes:

To the extent permitted by state law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

Federal Medical Assistance Utilization Control Requirements at 42 CFR 456.360 require:

Certification and recertification of need for inpatient care.

- (a) Certification. (1) A physician must certify for each applicant or recipient that ICF services are or were needed.
- (2) The certification must be made at the time of admission or, if an individual applies for assistance while in an ICF, before the Medicaid agency authorizes payment.
- (b) Recertification. (1) A physician or physician assistant or nurse practitioner (as defined in §491.2 of this chapter) acting within the scope of practice as defined by state law and under the supervision of a physician must recertify for each applicant or recipient that ICF services are needed.
- (2) Recertification must be made at least -
 - (I) Every 12 months after certification in an institution for the mentally retarded or persons with related conditions; and
 - (ii) Every 60 days after certification in an ICF other than an institution for the mentally retarded or persons with related conditions.

State law in HSS 134.52(c) requires a physician to concur with the admission decision and to provide an initial plan of care and orders for immediate care. Outside of the areas noted, HSS 134 does not restrict a physician from delegating tasks to a physician assistant or a nurse practitioner; consequently, physician assistants and nurse practitioners are otherwise limited in the tasks they perform only by their scope of practice as defined in Chapter Med 8 (physician assistants) and in Chapter 441, Stats., and section N 6.03(2), Wisconsin Administrative Code (nurse practitioners). A summary of the requirements of these regulations is found below.

Scope of practice as defined by state law

According to Chapter Med 8, Chapter 441, Stats., and section N 6.03(2), Wisconsin Administrative Code:

- (1) Both physician assistants and nurse practitioners may accept and perform delegated medical acts that are consistent with their training, education and experience and for which there are protocols.
- (2) Both nurse practitioners and physician assistants must carry out their responsibilities under the general direction of their supervising physician.
- (3) Both nurse practitioners and physician assistants must practice within the parameters of protocols established with and approved by the supervising physician.
- (4) The scope of practice of the physician assistant and nurse practitioner may not exceed the scope of practice of the supervising physician.

Two major points need consideration when discussing the practice of nurse practitioners and physician assistants in long-term care facilities.

- The supervising physician remains responsible for the medical care of the resident; and

- The long-term care facility has the right to determine the parameters of practice for nurse practitioners and physician assistants in their facility. This includes the right to refuse to allow nurse practitioners and physician assistants to practice in their facilities. Utilization of physician extenders is optional.

The above information has been summarized in Table 1 (attached).

If you have any further questions, please contact your Field Operations Manager.

Attachment

TABLE 1

Facility Type	Physician Delegation of Physician Assistant or Nurse Practitioner
State Licensed/Medicare Certified SNF	<p>Yes (Federal 42 CFR 483.40(e) defines limitations.)</p> <p>(State chapter Med 8 and Chapter 441 WI Stats., define physician assistant scope of practice.)</p> <p>(State Admin. Code N 6.03(2) defines nurse practitioner scope of practice.)</p>
State Licensed/Medicaid Certified NF	<p>Yes (Federal 42 CFR 483.40(f) defines limitations.)</p> <p>(State Chapter Med. 8 and Chap. 441 WI. Stats. define physician assistant scope of practice.)</p> <p>(State Adm. Code N 6.03(2) defines nurse practitioner scope of practice.)</p>
State Licensed-Only Nursing Home	<p>(State Chapter Med. 8 and Chapter 441 WI Stats define physician assistant scope of practice.)</p> <p>(State Adm. Code N 6.03(2) defines nurse practitioner scope of practice.)</p>
State Licensed/Medicaid Certified ICF/MR	<p>Yes (Federal 42 CFR 483.460(a)(4) defines limitations and 42 CFR 456.360 indicates <u>physician</u> responsibility for Medicaid utilization control requirements.</p> <p>(State HSS 134.52(c) requires <u>physician</u> concurrence for admission.)</p> <p>(State Chapter Med. 8 and Chapter 441 WI Stats. define physician assistant scope of practice.)</p> <p>(State Adm. Code N 6.03(2) defines nurse practitioner scope of practice.)</p>